

1 performance by Defendants of their obligations under this Consent Decree. This covenant not to sue
2 extends only to each Defendant and its heirs, successors and assigns, and does not extend to any
3 other person.

4 XX RESERVATIONS OF RIGHTS

5 43. Plaintiffs reserve, and this Decree is without prejudice to, all rights against any
6 Defendant with respect to all matters not expressly included within the Covenant Not to Sue by
7 Plaintiffs in Paragraph 42. Notwithstanding any other provision of this Decree, Plaintiffs reserve,
8 and this Decree is without prejudice to, all rights against each Defendant with respect to:

9 a. liability for failure of the Defendant to meet a requirement of this Decree;

10 b. liability for costs of response incurred or to be incurred by Plaintiffs, provided,
11 however, that nothing in this Subparagraph b. shall be deemed to supersede or conflict with the
12 provisions of the consent decree entered in *United States v. Bay Chemical, et al.*, W.D. Wash. case
13 number C99-5521RJ;

14 c. liability for injunctive relief or administrative order enforcement under Section 106
15 of CERCLA, 42 U.S.C. § 9606;

16 d. criminal liability to the United States or State.

17 XXI. REOPENERS

18 44. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve,
19 and this Consent Decree is without prejudice to, the right to institute proceedings against each
20 Defendant in this action or in a new action for:

21 a. Claims based on a failure of the Defendant to satisfy the requirements of this
22 Consent Decree; and

23 b. Additional claims for Natural Resource Damages if conditions, factors or
24 information in the Commencement Bay Environment, not known to the Trustees at the time of entry
25 of this Consent Decree, are discovered that, together with any other relevant information, indicates
26 that there is a threat to the environment, or injury to, destruction of, or loss of natural resources of
27 a type unknown, or of a magnitude significantly greater than was known, at the time of entry of this
28

1 Consent Decree, which is attributable to the Defendant. For purposes of this Paragraph, information
2 known to the Trustees shall consist of any information in the files of, or otherwise in the possession
3 of any one of the individual Trustees, or their contractors or consultants who worked on the Trustees'
4 natural resource damages assessment and liability allocation projects.

5 XXII. COVENANT NOT TO SUE BY DEFENDANTS

6 45. Each Defendant covenants not to sue and agrees not to assert any claims or causes
7 of action against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot
8 Indian Tribe or their contractors or employees, for any civil claims or causes of action relating to
9 Natural Resource Damages.

10 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

11 46. Nothing in this Consent Decree shall be construed to create any rights in, or grant any
12 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly
13 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,
14 demands, and causes of action they each may have with respect to any matter, transaction, or
15 occurrence relating in any way to the Commencement Bay Environment against any person not a
16 Party hereto.

17 47. The Parties agree, and by entering this Consent Decree this Court finds, that each
18 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution
19 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW
20 70.105D.040(4)(d), for Natural Resource Damages.

21 48. Each Defendant agrees that it will notify the Trustees and the United States in writing
22 no later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages.
23 Each Defendant also agrees that it will notify the Trustees and the United States in writing within
24 10 days of service of a complaint or claim upon them relating to a suit or claim for contribution for
25 Natural Resource Damages. In addition, each Defendant will notify the Trustees and the United
26 States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days
27 of receipt of any order from a court setting a case for trial for matters related to this Decree.

1 49. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for
2 injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource
3 Damages, no Defendant shall assert, and nor may it maintain, any defense or claim based upon the
4 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
5 defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent
6 proceeding were or should have been brought in the instant case; provided, however, that nothing
7 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 42 and
8 45.

9 XXIV NOTICES AND SUBMISSIONS

10 50. Whenever notice is required to be given or a document is required to be sent by one
11 Party to another under the terms of this Decree, it will be directed to the individuals at the addresses
12 specified below, unless those individuals or their successors give notice of a change to the other
13 Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice
14 requirement of the Decree for Plaintiffs and Defendants

15 As to the United States and as to DOJ:

16 Chief, Environmental Enforcement Section
17 Environment and Natural Resources Division
18 U.S. Department of Justice
19 P.O. Box 7611
20 Washington, D.C. 20044-7611
21 (DJ # 90-11-2-1049)

22 As to NOAA:

23 Robert A. Taylor
24 NOAA Office of General Counsel GCNR/NW
25 7600 Sand Point Way NE
26 Seattle, WA 98115-0070

27 As to the United States Department of the Interior:

28 Jeff Krausmann
U.S. Fish & Wildlife Service
510 Desmond Dr. SE, Suite 102

1 Lacey, WA 98503-1263

2 As to the State:

3 Craig Thompson

4 Toxics Cleanup Program

5 State of Washington

6 P.O. Box 47600

Olympia, WA 98504-7600

7 As to the Puyallup Tribe of Indians:

8 Bill Sullivan

9 Environmental Department

Puyallup Tribe of Indians

10 1850 Alexander Avenue

11 Tacoma, WA 98421

12 As to the Muckleshoot Indian Tribe:

13 Mr. Rob Otsea

14 Office of the Tribal Attorney

15 Muckleshoot Indian Tribe

16 39015 172nd Avenue S.E.

Auburn, WA 98002

17 As to AOL Express, Inc.:

18 Valerie Lewis

19 Asst. V.P. and Asst. Secretary

20 Safeway Inc.

5918 Stoneridge Mall Road

Pleasanton, CA 94619

21 As to Arkema Inc.:

22 Doug Loutzenhiser

23 Director, Envmt. & Sustainable Developmt.

24 Arkema Inc.

900 First Avenue

25 King of Prussia, PA 19406

Steven T. Parkinson

Groff Murphy Tractenberg & Everard

300 East Pine Street

Seattle, WA 98122

26 As to Buffelen Woodworking Company:

1 Loren Dunn
2 Riddell Williams P.S.
3 1001 Fourth Avenue Plaza, #4500
4 Seattle, WA 98154

5 As to CHS Inc.:

6 Tod Gold
7 Salter Joyce Ziker, PLLC
8 1601 Fifth Avenue, Suite 2040
9 Seattle, WA 98101

10 As to Edward and Molly Barry, Charles and Patricia Curran, Donald S. and Barbara Olson, Kay
11 E. Olson, Olson & Curran Barnacle Stopping Salt Water Free Vertical Dry Dock Co. dba Ole &
12 Charlie's Marinas and West Waterway Associates, P.S.:

13 Gregory A. Jacoby
14 McGavick Graves
15 Suite 500
16 1102 Broadway
17 Tacoma, WA 98402-3534

18 As to Dunlap Towing Company:

19 James L. Dunlap, President	Guy J. Sternal
20 P.O. Box 593	Eisenhower & Carlson
21 La Conner, Washington 98257	Wells Fargo Plaza, Suite 1200
	1201 Pacific Avenue
	Tacoma, WA 98402

22 As to Estate of Norman Nordlund, Hylebos Boat Haven, Phyllis Nordlund, Nordlund Boat
23 Company, Inc., and Nordlund Properties, Inc.:

24 Gregory A. Jacoby
25 McGavick Graves
26 Suite 500
27 1102 Broadway
28 Tacoma, WA 98402-3534

As to FOF, Inc.:

Patrick M. Paulich
Thorsrud Cane & Paulich
1325 Fourth Avenue, Suite 1300

1 Seattle, Washington 98101

2 As to Hylebos Marina Inc.:

3 James V. Handmacher
4 Morton McGoldrick, P.S.
5 P.O. Box 1533
6 820 A Street, Suite 600
Tacoma, WA 98401

7 As to Judy Johnson:

8 James V. Handmacher
9 Morton McGoldrick, P.S.
10 P.O. Box 1533
11 820 A Street, Suite 600
Tacoma, WA 98401

12 As to Jones Chemicals, Inc.:

13 Timothy J. Gaffney
14 Executive Vice President
15 JCI Jones Chemicals, Inc
16 100 Sunny Sol Boulevard
Caledonia, New York 14423

17 As to Joseph Simon & Sons and Rail & Locomotive Equipment Company (a Division of Joseph
Simon & Sons):

18 Philip Simon, President
19 2200 East River Street
20 Tacoma, Washington 98421

Guy J. Sternal
Eisenhower & Carlson
Wells Fargo Plaza, Suite 1200
1201 Pacific Avenue
Tacoma, WA 98402

22 As to Louisiana-Pacific Corporation:

23 Bert Krages
24 Attorney at Law
25 6665 SW Hampton St., Suite 200
26 Portland, OR 97223

27 As to Noveon Kalama Chemical, Inc.:

28
CONSENT DECREE - Page 32

U S Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6616

1 John W. Watson
2 Gardner Carton & Douglas LLP
3 191 N. Wacker Drive
4 Suite 3700
5 Chicago, IL 60606

6 As to Don and Alba Oline:

7 Clark J. Davis
8 Davis Roberts and Johns PLLC
9 7525 Pioneer Way, Suite 202
10 Gig Harbor, WA 98335

11 As to Ronald Oline:

12 James V. Handmacher
13 Morton McGoldrick, P S
14 P.O. Box 1533
15 820 A Street, Suite 600
16 Tacoma, WA 98401

17 As to Portac, Inc.:

18 Tod Gold
19 Salter Joyce Ziker, PLLC
20 1601 Fifth Avenue, Suite 2040
21 Seattle, WA 98101

22 As to Rayonier Properties, LLC:

23 R. Paul Beveridge	Donald L. Schwendiman
24 Heller Ehrman	Rayonier Properties, LLC
25 Suite 6100	3888 NW Randall Way, Suite 204
26 701 Fifth Avenue	Silverdale, WA 98383
27 Seattle, WA 98104	

28 As to Estate of Leslie P. Sussman, Paula Rose, Sussman Rose Sussman, Alan Sussman and
Sophie Sussman:

29 Guy J. Sternal
30 Eisenhower & Carlson
31 Wells Fargo Plaza, Suite 1200
32 1201 Pacific Avenue

1 Tacoma, WA 98402

2 As to USG Interiors, Inc.

3 Howard (Terry) Hall

4 Wolfstone, Panchot & Bloch, P.S., Inc.

5 801 Second Avenue, Suite 1500

6 Seattle, WA 98104

Christopher J. McElroy

Assistant General Counsel

USG Corp.

125 S. Franklin Street

Chicago, IL 60606

7 As to Wasser & Winters Co., Inc.:

8 James C. Hanken

9 Law Offices of James C. Hanken

999 Third Avenue, Suite 3210

10 Seattle, WA 98104

11 As to Zidell Marine Corporation:

12 Kathryn M. Silva

13 Zidell Marine Corporation

14 3121 SW Moody

Portland, OR 97239

Suzanne Lacampagne

Miller Nash LLP

111 SW Fifth Avenue, Suite 3400

Portland, OR 97204

16 XXV. EFFECTIVE DATE

17 51. The effective date of this Consent Decree shall be the date upon which this Consent
18 Decree is entered by the Court, except as otherwise provided herein

19 XXVI. RETENTION OF JURISDICTION

20 52. This Court will retain jurisdiction over this matter for the purpose of interpreting and
21 enforcing the terms of this Decree.

22 XXVII. INTEGRATION/APPENDICES

23 53. This Decree and its appendices constitute the final, complete, and exclusive
24 agreement and understanding with respect to the settlement embodied in this Decree. The Parties
25 acknowledge that there are no representations, agreements, or understandings relating to the
26 settlement other than those expressly contained in this Decree. The following appendices are
27 attached to and incorporated into this Consent Decree:

- 1 Appendix A Old Soldier's Home Setback Levee Setback Project Project Description
2 Appendix B Order Directing the Deposit of Natural Resource Damages into the
3 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B
4 (W.D. Wash. Oct 8, 1993)
5 Appendix C Project Site deed restrictions

6 XXVIII. MODIFICATION

7 54. No material modifications shall be made to any requirement under this Consent
8 Decree without written notification to and written approval of the United States Department of
9 Justice and the Trustees, Defendants and the Court. Modifications to this Consent Decree exclusive
10 of the appendices incorporated within that do not materially alter the terms of this Consent Decree
11 may be made by written agreement between the United States Department of Justice, the Trustees
12 and Defendants. Modifications to any of the appendices to this Consent Decree that do not materially
13 alter any of the terms of this Consent Decree may be made by written agreement between the
14 Trustees and Defendants. The following modifications shall be deemed not to materially alter the
15 terms of this Consent Decree or the appendices incorporated herein:

- 16 a. Extensions of deadlines contained in Appendix A, provided that the total
17 of such extensions shall equal one year or less;
18 b. Project design changes that increase the Project scale, or that decrease the
19 Project scale by no more than 10% (ten percent) of the Project's area; or
20 c. Extensions of deadlines for reports, accounts, plans or proposals of 45
21 days or less.

22 XXIX. ENFORCEMENT

23 55 The requirements of this Consent Decree, including but not limited to deadlines,
24 schedules and Project designs, are independently enforceable and the delay or failure of the Trustees
25 to enforce any requirement will not preclude or prejudice the subsequent enforcement of the same
26 or another requirement.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

56. This Decree shall terminate upon written notice, made in accordance with Section XXIV, by Defendants to all Plaintiffs that all actions required under Section VIII have been taken, all payments required under Sections VIII, XII and XIII (and under Sections XIV and XVI, if applicable) have been made and all other applicable requirements of this Decree have been fulfilled, and subsequent written notice by the United States confirming the performance by Defendants of their obligations under this Decree. Such notice by the United States shall be sent within 45 calendar days of receipt by all Plaintiffs of the required payments and notice from Defendants. If the United States fails to send such notice, this Decree shall terminate automatically on the 46th day following receipt by all Plaintiffs of the required payments and notice from Defendant. The following provisions of this Decree shall survive termination: Section IX (“Post-Construction Alterations; Further Restoration Actions”); Section X (“Access to Information and Project Site”); Section XIX (“Covenant Not to Sue by Plaintiffs”); Section XX (“Reservations of Rights”); Section XXI (“Reopeners”); Section XII (“Covenant Not to Sue by Defendants”); and Section XXIII (“Effect of Settlement; Contribution Protection”).

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

57. This Decree will be lodged with the Court for a period of not less than 30 days for public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their consent if the comments regarding the Decree disclose facts or considerations that indicate this Decree is inappropriate, improper, or inadequate. Each Defendant consents to the entry of this Decree without further notice.

58. If for any reason this Court does not approve this Decree in the form presented, or does not approve this Decree by June 30, 2006 and Pierce County does not extend the applicable deadline for performance contained in the Project agreement with Defendants, this settlement agreement may be voided at the sole discretion of any Party, and the terms of the agreement may not be used as evidence in any litigation between the Parties

XXXII. SIGNATORIES/SERVICE

59. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice and each undersigned representative of the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and each Defendant certifies that he or she is authorized to enter into the terms and conditions of this Decree and to execute and bind legally the Party that he or she represents to this document

60. Each Defendant agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless any Plaintiff has notified Defendant in writing that it no longer supports entry of the Decree.

61. Each Defendant will identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on behalf of it with respect to all matters relating to this Decree. Each Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons.

XXXIII. FINAL JUDGMENT

62. Upon approval and entry of this Decree by the Court, this Decree will constitute the final judgment between and among the United States, the State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, and each Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS DAY OF 2006.

United States District Judge